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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1026

[Docket No. CFPB-2016-0016]

RIN 3170-AA49

Amendments to the 2013 Mortgage Servicing Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Reopening of comment period with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is reopening the comment period for a specific aspect of the proposed rule published by the Bureau in the **Federal Register** on December 15, 2014 (79 FR 74176). On December 15, 2014, the Bureau published for notice and comment proposed amendments to certain mortgage servicing provisions in Regulation X and Regulation Z. Among other things, the proposed rule: addressed requiring servicers to provide modified periodic statements under Regulation Z to consumers who have filed for bankruptcy, subject to certain exceptions; included related proposed sample periodic statement forms; and indicated that the Bureau intended to conduct consumer testing of the proposed sample forms and would publish and seek comment on a report summarizing the methods and results of such testing prior to finalizing any sample forms. The original comment period to the proposed rule closed on March 16, 2015. The Bureau conducted consumer testing of sample periodic statement forms for consumers in bankruptcy after the close of the original comment period. The Bureau now reopens the comment period until **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]** to seek comment specifically

on the report summarizing consumer testing of sample periodic statement forms for consumers in bankruptcy.

DATES: The comment period for the proposed rule published on December 15, 2014 (79 FR 74176) is reopened. Comments must be received on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by Docket No. CFPB-2016-0016 or RIN 3170-AA49, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2016-0016 or RIN 3170-AA49 in the subject line of the email.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW, Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street, NE, Washington, DC 20002.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street, NE, Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Dania L. Ayoubi or David H. Hixson, Counsels, or Laura A. Johnson, Senior Counsel; Office of Regulations, at 202-435-7700.

SUPPLEMENTARY INFORMATION:

I. Background

In January 2013, the Bureau issued several final rules concerning mortgage markets in the United States (2013 Title XIV Final Rules), pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, 124 Stat. 1376 (2010).¹ Two of these rules were (1) the Mortgage Servicing Rules Under the Real Estate Settlement Procedures Act (Regulation X) (2013 RESPA Servicing Final Rule);² and (2) the Mortgage

¹ Specifically, on January 10, 2013, the Bureau issued Escrow Requirements Under the Truth in Lending Act (Regulation Z), 78 FR 4725 (Jan. 22, 2013) (2013 Escrows Final Rule), High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X), 78 FR 6855 (Jan. 31, 2013) (2013 HOEPA Final Rule), and Ability to Repay and Qualified Mortgage Standards Under the Truth in Lending Act (Regulation Z), 78 FR 6407 (Jan. 30, 2013) (January 2013 ATR Final Rule). The Bureau concurrently issued a proposal to amend the January 2013 ATR Final Rule, which was finalized on May 29, 2013. *See* 78 FR 6621 (Jan. 30, 2013) (January 2013 ATR Proposal) and 78 FR 35429 (June 12, 2013) (May 2013 ATR Final Rule). On January 17, 2013, the Bureau issued the Real Estate Settlement Procedures Act (Regulation X) and Truth in Lending Act (Regulation Z) Mortgage Servicing Final Rules, 78 FR 10901 (Feb. 14, 2013) (Regulation Z) and 78 FR 10695 (Feb. 14, 2013) (Regulation X) (2013 Mortgage Servicing Final Rules). On January 18, 2013, the Bureau issued the Disclosure and Delivery Requirements for Copies of Appraisals and Other Written Valuations Under the Equal Credit Opportunity Act (Regulation B), 78 FR 7215 (Jan. 31, 2013) (2013 ECOA Valuations Final Rule) and, jointly with other agencies, issued Appraisals for Higher-Priced Mortgage Loans (Regulation Z), 78 FR 10367 (Feb. 13, 2013) (2013 Interagency Appraisals Final Rule). On January 20, 2013, the Bureau issued the Loan Originator Compensation Requirements under the Truth in Lending Act (Regulation Z), 78 FR 11279 (Feb. 15, 2013) (2013 Loan Originator Final Rule).

² 78 FR 10695 (Feb. 14, 2013).

Servicing Rules Under the Truth in Lending Act (Regulation Z) (2013 TILA Servicing Final Rule).³ These two rules are referred to collectively as the 2013 Mortgage Servicing Final Rules.

The Bureau clarified and revised those rules through notice and comment rulemaking during the summer and fall of 2013 in the (1) Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (July 2013 Mortgage Final Rule)⁴ and (2) Amendments to the 2013 Mortgage Rules under the Equal Credit Opportunity Act (Regulation B), Real Estate Settlement Procedures Act (Regulation X), and the Truth in Lending Act (Regulation Z) (September 2013 Mortgage Final Rule).⁵ In October 2013, the Bureau issued clarified compliance requirements in relation to successors in interest, early intervention requirements, bankruptcy law, and the Fair Debt Collection Practices Act (FDCPA),⁶ through an Interim Final Rule (IFR)⁷ and a contemporaneous compliance bulletin (October 2013 Servicing Bulletin).⁸ Among other things, the IFR provisionally exempted servicers from the periodic statement requirement for a mortgage loan while the consumer is a debtor in bankruptcy and indicated that the Bureau would continue to examine the issue and might reinstate the requirement to provide a consumer in bankruptcy with a periodic statement.⁹ In October 2014, the Bureau added an alternative definition of small servicer in the Amendments to the 2013 Mortgage Rules under the Truth in Lending Act

³ 78 FR 10901 (Feb. 14, 2013).

⁴ 78 FR 44685 (July 24, 2013).

⁵ 78 FR 60381 (Oct. 1, 2013).

⁶ 15 U.S.C. 1692 *et seq.*

⁷ 78 FR 62993 (Oct. 23, 2013).

⁸ Consumer Fin. Prot. Bureau, CFPB Bulletin 2013–12, *Implementation Guidance for Certain Mortgage Servicing Rules* (Oct. 15, 2013), available at http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf.

⁹ 78 FR 62993, 63000-01 (Oct. 23, 2013). The Bureau received comments in response to the IFR that it took into account in developing the proposed rule and sample forms for consumers in bankruptcy.

(Regulation Z).¹⁰ The purpose of each of these updates was to address important questions raised by industry, consumer advocacy groups, and other stakeholders. The 2013 Mortgage Servicing Final Rules, as amended in 2013 and 2014, are referred to herein as the Mortgage Servicing Rules.

On December 15, 2014, the Bureau published for notice and comment a proposed rule amending Regulation X and Regulation Z.¹¹ Among other things, the proposed amendments to § 1026.41 of Regulation Z would require servicers to provide modified periodic statements to consumers who have filed for bankruptcy, subject to certain exceptions, with content varying depending on whether the consumer is a debtor in a Chapter 7 or Chapter 11 bankruptcy case, or in a Chapter 12 or Chapter 13 bankruptcy case, respectively.¹² The Bureau also proposed related sample periodic statement forms,¹³ and indicated that it would conduct consumer testing of the proposed sample forms. As the Bureau explained in the proposed rule, “[p]rior to finalizing any such sample forms, the Bureau will publish and seek comment on a report summarizing the methods and results of the consumer testing.”¹⁴

The comment period for the proposed rule closed on March 16, 2015. In response to the proposed rule, the Bureau received over 100 comment letters during the comment period from numerous commenters, including servicers, consumer groups, trade associations, other government entities, and individual consumers. In particular, the Bureau received a number of comments addressing the merits of the proposed provisions on the bankruptcy period statements.

¹⁰ 79 FR 65300, 65304 (Nov. 3, 2014).

¹¹ 79 FR 74176 (Dec. 15, 2014).

¹² The discussion of the relevant portions of the proposed rule pertaining to the bankruptcy periodic statements are available at 79 FR 74176, 74256-66 (Dec. 15, 2014).

¹³ 79 FR 74176, 74267 and 74300-02 (Dec. 15, 2014).

¹⁴ 79 FR 74175, 74266 (Dec. 15, 2014).

After the close of the comment period, interested parties submitted to the Bureau additional oral ex parte presentations and written ex parte comments on the proposed rule.¹⁵ In addition, the Bureau has conducted ex parte outreach to servicers to gain insight into their mortgage processing systems and capabilities to implement proposed changes to the servicing of loans in bankruptcy.¹⁶ After the close of the comment period, as discussed in more detail below, the Bureau conducted consumer testing of sample periodic statement forms that servicers could use for consumers in bankruptcy to comply with the related proposed amendments to § 1026.41.

II. Discussion and Request for Comment

Following publication of the proposed rule, the Bureau engaged Fors Marsh Group (FMG), a research and consulting firm that specializes in designing disclosures and consumer testing, to conduct one-on-one cognitive interviews of consumers to test the Bureau's proposed sample periodic statement forms for consumers who have filed for bankruptcy, with content varying depending on whether the consumer is a debtor in a Chapter 7 or Chapter 11 bankruptcy case, or in a Chapter 12 or Chapter 13 bankruptcy case, respectively. As described in detail in the report summarizing the testing,¹⁷ the Bureau and FMG worked closely to develop and test the Bureau's proposed sample modified periodic statement forms and various revisions thereto. Between May 2015 and August 2015, FMG conducted three rounds of one-on-one cognitive interviews regarding the forms with a total of 51 participants in Arlington, Virginia, Fort

¹⁵ See Consumer Fin. Prot. Bureau, CFPB Bulletin 11–3, *CFPB Policy on Ex Parte Presentations in Rulemaking Proceedings* (Aug. 16, 2011), available at http://files.consumerfinance.gov/f/2011/08/Bulletin_20110819_ExPartePresentationsRulemakingProceedings.pdf. Materials pertaining to these presentations are filed in the record and are publicly available at <http://www.regulations.gov>.

¹⁶ Summaries of the Bureau's outreach are filed in the record and are publicly available at <http://www.regulations.gov>.

¹⁷ Fors Marsh Group, *Testing of Bankruptcy Periodic Statement Forms for Mortgage Servicing* (Feb. 2016), available at <http://www.consumerfinance.gov/reports> (report on consumer testing submitted to the CFPB).

Lauderdale, Florida, and Chicago, Illinois. Efforts were made to recruit a significant number of participants who had filed for bankruptcy, who had a mortgage (preferably when they filed for bankruptcy), and who had trouble making mortgage payments in the last two years.

During the interviews, participants were shown sample modified periodic statements. In general, participants who had filed for Chapter 7 bankruptcy reviewed the statements tailored to borrowers who are debtors in a Chapter 7 or Chapter 11 bankruptcy case, while participants who had filed for Chapter 13 bankruptcy reviewed the statements tailored to borrowers who are debtors in a Chapter 12 or Chapter 13 bankruptcy case. Participants were asked specific questions to test their understanding of the information presented in the sample statements, how easily they could find various pieces of information presented in the sample statements, as well as to learn about how they would use the information presented in the sample statements. The Bureau and FMG worked closely to develop revisions to all of the forms between rounds to address any usability or comprehension issues that became apparent, as well as to respond further to public comments the Bureau received on the proposed rule.

As noted above, the Bureau indicated in its proposed rule that it would conduct consumer testing of sample periodic statement forms for consumers in bankruptcy and publish a report prior to finalizing any such sample forms. The Bureau conducted the consumer testing after the close of the original comment period and is now issuing this notice to reopen the comment period in order to publish and seek public comment specifically on the report summarizing the methods and results of the testing. The Bureau is not soliciting comment on other aspects of the proposed rule, including the merits of the proposal to require periodic statements for consumers in bankruptcy under certain circumstances. As noted above, the Bureau has already received a number of comments on the merits of the proposal, and any further such comments will be

considered outside of the scope of this request for public comment. Therefore, the Bureau encourages commenters to limit their submissions accordingly to the report, its findings, and conclusions.

Dated : April 21 , 2016.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

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